

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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AMANDA MORALES,

Plaintiff,

v.

Case No. 1:21-cv-01044-KWR-JHR

SMI FACILITY SERVICES, *et al.*,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

**THIS MATTER** comes before the Court upon Defendant Valentin Garcia's Motion to Dismiss (**Doc. 4**).

Defendant Valentin Garcia moves to dismiss the claims against him on the grounds that (1) he was not served with the summons and complaint and (2) Plaintiff failed to state a claim against him pursuant to Fed. R. Civ. P. 12(b)(6). **Doc. 4.**

Defendant Valentin Garcia is a shareholder of Defendant SMI. It is unclear whether Valentin Garcia is in fact a named defendant in this suit. Plaintiff alleges that Defendant Valentin Garcia owns and operates Defendant SMI, but she does not assert any other factual allegations against Defendant Valentin Garcia. Therefore, it appears that Plaintiff fails to state a claim against Defendant Valentin Garcia.

However, the Court will grant the motion to dismiss because Plaintiff did not file a response to the motion, which constitutes consent to grant the motion. D.N.M.LR-Civ. 7.1(b). Pursuant to Local Rule of Civil Procedure 7.4(a), Plaintiff was required to file a response to the motion within fourteen days after service of the response. "The failure of a party to file and serve a response in

opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion.” D.N.M.LR-Civ. 7.1(b). This motion was filed on October 29, 2021. Plaintiff did not file a response. *Pro se* parties are expected to follow the Court’s local rules. *See Nielsen v. Price*, 17 F.3d 1276, 1277 (10th Cir. 1994) (“This court has repeatedly insisted that pro se parties follow the same rules of procedure that govern other litigants.”). Although Plaintiff filed a motion to remand on November 30, 2021, the motion did not address the motion to dismiss. Therefore, the Court finds that Plaintiff has consented to dismissal of the claims against Defendant Valentin Garcia. The Court sees no reason why the claims against Defendant Valentin Garcia should not be dismissed. This order does not address Plaintiff’s claims against any other defendant in this case.

Plaintiff is warned that she is expected to comply with the Court’s local rules, the Federal Rules of Civil Procedure, and the Court’s orders. Failure to do so may result in sanctions, such as dismissal of her claims.

**IT IS THEREFORE ORDERED** that Defendant, Valentin Garcia’s Motion to Dismiss (Doc. 4) is hereby **GRANTED**.

**IT IS SO ORDERED.**

  
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**KEA W. RIGGS**  
**UNITED STATES DISTRICT JUDGE**